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10 Telephone: (707) 291-2245
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11 Attorney for Defendants
12 MAYA PALENQUE RESTAURANT;
FREEWILL HOLDINGS, INC dba
13 MAYA PALENQUE; YOUNG DUGAN;
MI CASA PROPERTIES, LLC

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 PETER MENDOZA,

19 Plaintiff,

21 vs.

22 MAYA PALENQUE
23 RESTAURANT; FREEWILL
HOLDINGS, INC dba MAYA
24 PALENQUE; YOUNG DUGAN;
MI CASA PROPERTIES, LLC; and
25 DOES 12-10, INCLUSIVE,

26 Defendants.

Case No. 10-CV-4978 EDL

Civil Rights

**CONSENT DECREE AND
[PROPOSED] ORDER**

1 1. Plaintiff PETER MENDOZA filed a Complaint in this action on
 2 November 3, 2010 to obtain recovery of damages for his discriminatory
 3 experiences, denial of access, and denial of his civil rights, and to enforce provisions
 4 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et*
 5 *seq.*, and California civil rights laws against defendants MAYA PALENQUE
 6 RESTAURANT; FREEWILL HOLDINGS, INC dba MAYA PALENQUE;
 7 YOUNG DUGAN; MI CASA PROPERTIES, LLC (together sometimes
 8 "Defendants"), relating to the condition of Defendants' public accommodations as
 9 of January 2, 2010, and continuing. Plaintiff has alleged that Defendants violated
 10 Title III of the ADA and sections 51, 52, 54, 54.1, 54.3, and 55 of the California
 11 Civil Code, and sections 19955 *et seq.* of the California Health & Safety Code by
 12 failing to provide full and equal access to their facilities at 349 Enfrente Rd., Novato,
 13 California.

14 2. Plaintiff and Defendants (together sometimes the "Parties") hereby
 15 enter into this Consent Decree and Order for the purpose of resolving this lawsuit.
 16

17 **JURISDICTION:**

18 3. The Parties to this Consent Decree and Order agree that the Court has
 19 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
 20 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
 21 and pursuant to supplemental jurisdiction for alleged violations of California
 22 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
 23 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.

24 4. In order to avoid the costs, expense, and uncertainty of protracted
 25 litigation, the Parties to this Consent Decree and Order agree to entry of this
 26 Consent Decree and Order to resolve all claims raised in the Complaint filed with
 27

1 this Court. Accordingly, the Parties agree to the entry of this Order without trial or
2 further adjudication of any issues of fact or law concerning Plaintiff's claims.

3 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate
4 to the Court's entry of this Consent Decree and Order, which provide as follows:

5

6 **SETTLEMENT OF INJUNCTIVE RELIEF:**

7 5. This Order shall be a full, complete, and final disposition and
8 settlement of Plaintiff's claims against Defendants that have arisen out of the
9 subject Complaint.

10 6. The Parties agree and stipulate that the corrective work will be
11 performed as follows:

12 a) **Remedial Measures:** Defendants will complete the following
13 corrective work:

14 i. Restrooms -- Provide men's and women's accessible
15 restrooms;

16 ii. Exterior Ramp -- Provide handrails for exterior ramp and
17 landing and edge protection along the walk to the
18 parking;

19 iii. Parking -- Provide two (2) accessible (including one van-
20 accessible) parking spaces and a marked path of travel to
21 the exterior ramp referenced above in 6(a)(ii).

22 iv. Patio Access -- Create an accessible path of travel to the
23 outdoor patio area. Include directional signage.

24 b) **Timing of Injunctive Relief:** In the event that building
25 permits are not required for the above-described work, the following timeline for
26 work shall apply:

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- i. Restrooms – To be completed within 60 days of the date this Consent Decree is signed by the Parties;
- ii. Ramp – completed within 90 days of the date this Consent Decree is signed by the Parties;
- iii. Parking Lot – completed within 120 days of the date this Consent Decree is signed by the Parties; and
- iv. Patio – completed within 150 days of the date this Consent Decree is signed by the Parties.

9 In the event that building permits are required for any of the above-described
10 work, the following timeline shall apply:

- i. Restrooms – To be completed within 60 days of issuance of the permit;
- ii. Ramp – To be completed within 90 days of issuance of the permit;
- iii. Parking Lot – To be completed within 120 days of issuance of the permit; and
- iv. Patio – To be completed within 150 days of issuance of the permit

19 If permits are required for any of the above-described work, Defendants will
20 submit plans for all corrective work requiring permits to the appropriate
21 governmental agencies within 30 days of the Parties' signatures on this Consent
22 Decree. Defendants will commence work within 30 days of receiving approval
23 from the appropriate agencies. In the event that unforeseen difficulties prevent
24 Defendants from completing any of the agreed-upon injunctive relief, Defendants
25 or their counsel will notify Plaintiff's counsel in writing within 15 days of
26 discovering the delay. Plaintiff will have thirty (30) days to investigate and meet
27 and confer, and to approve the delay by stipulation or otherwise respond to

1 Consent Decree and Order. Defendants shall pay to Plaintiff's attorneys a total of
 2 \$30,353.52 for Plaintiff's attorney fees, litigation expenses, and costs, with
 3 payment to be made to "PAUL L. REIN." Defendants agree to make payment of
 4 Plaintiff's \$30,353.52 in attorney fees, litigation expenses, and costs in twelve (12)
 5 installments over twelve (12) months, each payment totaling \$2,529.46, all
 6 payments to be delivered to the Law Offices of Paul L. Rein, 200 Lakeside Drive,
 7 Suite A, Oakland, CA 94612. The first payment for attorney fees, litigation
 8 expenses, and costs shall be delivered by September 16, 2012 and each subsequent
 9 payment shall be made by the 16th of each following month. If any payment is not
 10 timely made, the full balance of amounts owing shall be immediately due and
 11 enforceable by the Court. Plaintiff shall have the obligation to notify Defendants
 12 of any alleged missed payment and give them 5 business days to comply.

13

14 **ENTIRE CONSENT DECREE AND ORDER:**

15 8. This Consent Decree and Order constitutes the entire agreement
 16 between the signing Parties and no other statement, promise, or agreement, either
 17 written or oral, made by any of the Parties or agents of any of the Parties that is not
 18 contained in this written Consent Decree and Order, shall be enforceable regarding
 19 the matters described herein.

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21 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND
 22 SUCCESSORS IN INTEREST:**

23 9. This Consent Decree and Order shall be binding on Plaintiff,
 24 Defendants, and any successors-in-interest. Defendants have a duty to so notify all
 25 such successors-in-interest of the existence and terms of this Consent Decree and
 26 Order during the period of the Court's jurisdiction of this Consent Decree and
 27 Order.

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1 Defendants' notice. If the Parties cannot reach agreement regarding the delay
 2 within an additional fifteen days, Plaintiff may seek enforcement by the Court.
 3 Defendants or their counsel will notify Plaintiff's counsel when the corrective work
 4 is completed, and in any case will provide a status report to Plaintiff's counsel no
 5 later than 120 days from the entry of this Consent Decree.

6 c) Defendants will notify Plaintiff in writing at the end of 120
 7 days from the Parties' signing of this Consent Decree and Order as to the current
 8 status of agreed-to injunctive relief, and every 90 days thereafter until all access is
 9 provided. If Defendants fail to provide injunctive relief on the agreed upon
 10 timetable and/or fail to provide timely written status notification, and Plaintiff files
 11 a motion with the Court to obtain compliance with these terms, Plaintiff reserves
 12 the right to seek additional attorneys' fees for any compliance work necessitated by
 13 Defendants' failure to keep this agreement. If the Parties disagree, such fees shall
 14 be set by the Court. Plaintiff agrees to provide Defendants, through their
 15 undersigned counsel, with at least 5 business days notice to cure any default under
 16 this Consent Decree & Order before seeking relief from the Court to obtain
 17 compliance with the terms of this Consent Decree & Order.

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19 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND
 20 COSTS:**

21 7. The Parties have also reached an agreement regarding Plaintiff's
 22 claims for damages and attorney fees, litigation expenses, and costs. Defendants
 23 shall pay to Plaintiff a total of \$4,000 for Plaintiff's damages for emotional distress
 24 and civil rights violations, with payment to be made to "PAUL L. REIN IN
 25 TRUST FOR PETER MENDOZA." Defendants agree to deliver full payment of
 26 Plaintiff's \$4,000 damages to the Law Offices of Paul L. Rein, 200 Lakeside Drive,
 27 Suite A, Oakland, CA 94612 within six months from the Parties' signing of this

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2 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

3 10. Each of the Parties to this Consent Decree and Order understands and
4 agrees that there is a risk and possibility that, subsequent to the execution of this
5 Consent Decree and Order, any or all of them will incur, suffer, or experience
6 some further loss or damage with respect to the lawsuit that is unknown or
7 unanticipated at the time this Consent Decree and Order is signed. Except for all
8 obligations required in this Consent Decree and Order, the Parties intend that this
9 Consent Decree and Order apply to all such further loss with respect to the lawsuit,
10 except those caused by the Parties subsequent to the execution of this Consent
11 Decree and Order. Therefore, except for all obligations required in this Consent
12 Decree and Order, this Consent Decree and Order shall apply to and cover any and
13 all claims, demands, actions, and causes of action by the Parties to this Consent
14 Decree with respect to the lawsuit, whether the same are known, unknown, or
15 hereafter discovered or ascertained, and the provisions of Section 1542 of the
16 California Civil Code are hereby expressly waived. Section 1542 provides as
17 follows:

18 **A GENERAL RELEASE DOES NOT EXTEND TO**
19 **CLAIMS WHICH THE CREDITOR DOES NOT**
20 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
21 **FAVOR AT THE TIME OF EXECUTING THE**
22 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
23 **MUST HAVE MATERIALLY AFFECTED HIS**
24 **SETTLEMENT WITH THE DEBTOR.**

25
26 11. Except for all obligations required in this Consent Decree and Order,
27 each of the Parties to this Consent Decree and Order, on behalf of each, their

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1 respective agents, representatives, predecessors, successors, heirs, partners, and
2 assigns, releases and forever discharges each other Party and all officers, directors,
3 shareholders, subsidiaries, joint venturers, stockholders, partners, parent
4 companies, employees, agents, attorneys, insurance carriers, heirs, predecessors,
5 and representatives of each other Party, from all claims, demands, actions, and
6 causes of action of whatever kind or nature, presently known or unknown, arising
7 out of or in any way connected with the lawsuit. Notwithstanding the foregoing,
8 the Defendants do not waive or release, but instead explicitly preserve, their rights
9 to seek contribution, apportionment, indemnification, and all other appropriate
10 relief from each other in connection with this Lawsuit and settlement thereof.
11 Such right shall be the subject of a separate settlement agreement between the
12 Defendants which shall be independently enforceable as to the Defendants.
13

14 **PROBATE COURT APPROVAL**

15 12. This entire agreement is subject to approval by the probate court for
16 the pending case related to the Estate of defendant Young Dugan, unless the
17 probate court declines to consider this agreement.
18

19 **TERM OF THE CONSENT DECREE AND ORDER:**

20 13. This Consent Decree and Order shall be in full force and effect for a
21 period of eighteen (18) months after the date of entry of this Consent Decree and
22 Order by the Court, or until the injunctive relief contemplated by this Order is
23 completed and all payments described in paragraph 7 are made, whichever occurs
24 later. The Court shall retain jurisdiction of this action to enforce provisions of this
25 Consent Decree and Order for eighteen (18) months after the date of entry of this
26 Consent Decree and Order by the Court, or until the injunctive relief contemplated
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1 by this Order is completed and all payments described in paragraph 7 are made,
2 whichever occurs later.

3 **SEVERABILITY:**

4 14. If any term of this Consent Decree and Order is determined by any
5 court to be unenforceable, the other terms of this Consent Decree and Order shall
6 nonetheless remain in full force and effect.

7
8 **SIGNATORIES BIND PARTIES:**

9 15. Signatories on the behalf of the Parties represent that they are
10 authorized to bind the Parties to this Consent Decree and Order. This Consent
11 Decree and Order may be signed in counterparts and a facsimile signature shall
12 have the same force and effect as an original signature.

13
14 **END OF PAGE.**

15 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT**
16 **THE END OF THE DOCUMENT.**

1 Dated: 3/16, 2012

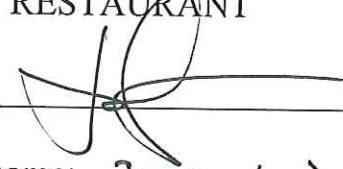
PLAINTIFF PETER MENDOZA

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PETER MENDOZA

Dated: 3/16, 2012

DEFENDANT MAYA PALENQUE
RESTAURANT

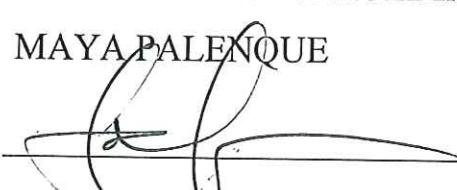
By: 

Print name: Joseph Dugan

Title: Administrator, estate of
Young Dugan

Dated: 3/16, 2012

DEFENDANT FREEWILL HOLDINGS, INC dba
MAYA PALENQUE

By: 

Print name: Joseph Dugan

Title: Administrator, estate of
Young Dugan

DEFENDANT MI CASA PROPERTIES, LLC

By: 

Print name: Joseph Dugan

Title: Administrator, Estate of
Young Dugan

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//

1 Dated: 3/16, 2012

ESTATE OF YOUNG DUGAN

2 By: 

3 Print name: Joseph Dugan

4

5 Title: Administrator, Estate of
Young Dugan

6 Dated: 3/16, 2012

7 JOSEPH DUGAN

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9

10 JOSEPH DUGAN (as an individual)

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12 APPROVED AS TO FORM:

13 DATED: 3/16, 2012

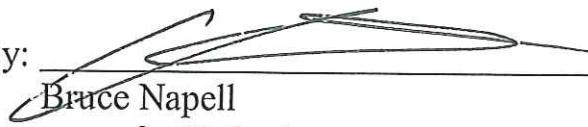
14 LAW OFFICES OF PAUL L. REIN

15 By: 
16 Catherine M. Cabalo
17 Attorneys for Plaintiff
18 PETER MENDOZA

19

20 DATED: 3/16, 2012

21 LAW OFFICE OF BRUCE NAPELL

22 By: 
23 Bruce Napell
24 Attorneys for Defendants
25 MAYA PALENQUE RESTAURANT;
26 FREEWILL HOLDINGS, INC dba MAYA
27 PALENQUE; YOUNG DUGAN; MI CASA
28 PROPERTIES, LLC

1 **ORDER**
2 Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.
3 This action is hereby closed for administrative purposes.
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5 Dated: March 28, 2012
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